Police Prosecutor Update

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A recent case highlights the importance of advising a suspect of the right to counsel prior to making a decision whether to stipulate to the admissibility of the results of a polygraph examination. In this case, a detective went to the residence of the defendant, a suspected child molester, armed with a polygraph stipulation. The detective read the stipulation to him and explained to him that "it is an agreement between you and the prosecutor's office to allow the results of this test that we are getting ready to, for you to go and take, to be admitted in court." The stipulation agreement provided that the polygraph results could not be admitted at trial without this stipulation, and it included a waiver to any objection the defendant may have regarding the admission of the results at trial. It did not mention or include a *Miranda* warning or notice of his right to counsel. In the Court of Appeals' view, this was fatal. A suspect must be informed of his right to counsel *prior to* stipulating the results of a polygraph examination. It would be best to include an advice of rights, including right to counsel, and a waiver of these rights in the polygraph stipulation form itself.

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In another recent case, a police officer initiated a traffic stop based on the darkness of the car's window tint, which stop resulted in discovery of evidence leading to a dealing in cocaine conviction. The defendant claimed that the officer had no formal training in terms of identifying whether a window had a tint that was too dark. The Court of Appeals disagreed. No formal training is required to determine whether a window's tint is so dark "that the occupants of the vehicle cannot be easily identified or recognized through that window from outside the vehicle," as required by IC 9-19-19-4(c). The defendant also contended that the traffic stop was unreasonable because the officer did not possess any instrument or device to determine whether or not the window tint on his car was legal. Again the court disagreed. The plain language of IC 9-19-19-4(c) indicates that once an officer determines that a motorist's window is tinted such that the occupants cannot be easily identified or recognized, it is the motorist's burden to establish the defense set forth in the statute.

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Another case addressed a challenge to Indiana's public nudity statute, IC 35-45-4-1.5. The defendant was observed by his neighbors in the nude on his property. Although it was dark, he was observed in the headlights of the neighbors' truck. The phrase "public place" means any place where the public is invited and are free to go upon special or implied invitation; a place available to all or a certain segment of the public. Based on this definition, the defendant argued that he was not *standing* in a public place when he was observed by the neighbors. However, the statute prohibits *appearing* nude in a public place. "Appear" means "to come forth, be visible . . . to come into view . . . to become visible." Therefore, the public nudity statute prohibits knowingly or intentionally being visibly nude to persons in a public place. This would include being nude in your own yard if you are visible to persons on a sidewalk or street.

Cases: *Caraway v. State*, 891 N.E.2d 122 (Ind. Ct. App. 2008)
Herbert v. State, 891 N.E.2d 67 (Ind. Ct. App. 2008)
Weideman v. State, 890 N.E.2d 28 (Ind. Ct. App. 2008)